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Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street, Drawer 20  
Montpelier, VT 05620-2701

VIA EMAIL

RE: PSB Docket No. 7523 — SPEED Standard Offer – Next Steps

Dear Ms. Hudson,

Green Mountain Power would like to provide the following comments in response to the Board's next steps memo dated July 15, 2009.

### **Nature of Docket 7533**

Docket 7533 will significantly affect the interests of Vermont ratepayers by, among other things, establishing prices that will be paid (indirectly) by them for renewable generation. Given the fact that what those prices should be will probably be subject to widely differing views, GMP believes that adherence to the contested case requirement, and particularly the requirement that the facts underlying the board's decision be adduced in the context of an evidentiary hearing, is important. An evidentiary hearing is the best means for accurately distilling the relevant facts in a fair and transparent manner. *See Petition of Green Mountain Power Corp.*, 131 Vt. 284, 293 (1973) (Critical to a determination of whether a procedure is fair is whether the parties were given an adequate opportunity to prepare and respond to the issues raised in the proceeding).

The need for a hearing can be fairly inferred by the fact that while Act 45 mandates that the board's review of the statutorily set prices be conducted by way of a noncontested case proceeding, it is silent as to the type of process the board should follow in setting permanent prices. *See Fraser v. Sleeper*, 182 Vt. 206, 212 (2007) (Where the legislature includes particular language in one section of a statute, but omits it in another section of the same act, it is generally presumed that the legislature did so advisedly).

Additionally, "ratemaking" is explicitly referenced in 3 V.S.A. § 801's definition of "contested case." *See Beaupre v. Green Mountain Power Corp.*, 172 Vt. 583, 587 ((Mem. 2001) (implication that proceeding triggered by consumer complaint is a contested case

proceeding); *North v. City of Burlington*, 125 Vt. 240, 242 (1965). It is well established that different statutes relating to the same subject should be construed together and in harmony if possible. See *Holmberg v. Brent*, 161 Vt. 153, 154 (1993); *Vermont Agency of Transportation v. Mazza*, 161 Vt. 564, 565 (1993).

### **Legal Authority for Auction**

The statute requires the Public Service Board to set rates based on the following summarized criteria:

- Technology-specific generic costs
- Return on equity not less than the highest rate of utility return
- Adjustment to ROE as necessary to provide sufficient incentive for rapid development

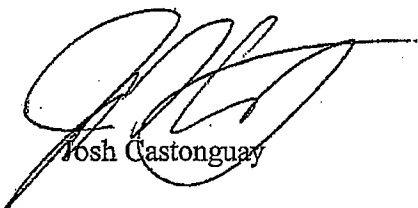
If a rate is based on binding offers to a request for proposal, or auction method, and certification is made that the offer is based on the above criteria, then GMP feels this is an appropriate means to set a rate. A bid or auction process will assist in making sure that Vermont rate payers are not exposed to inefficient or inflated rates for renewable energy development.

### **Project Eligibility**

1. **Is the standard offer available for existing generation facilities, including net metering facilities?** The standard offer does not apply to net metered facilities. Customer will have a choice to participate in the standard offer or net metering depending on their individual circumstances. It should be assumed that projects constructed and commissioned before standard offer, were developed and approved under their own economic evaluation and thus not eligible for standard offer. Standard offer should only be available for projects that are commissioned after September 30, 2009, the date set in legislation for the enactment of the standard offer.
2. **Is the standard offer available for generation facilities eligible for the SPEED program that have been constructed, but are not selling power or participating in net metering.** Net metering projects will not be eligible for standard offer. SPEED resources are eligible, as discussed above, as long as the project is not commissioned and online before September 30, 2009, and the project meets all the requirements set forth by the Public Service Board in Docket 7523, they should be eligible for standard offer.
3. **Is the standard offer available for generation facilities eligible for the SPEED program that have not yet been constructed, but have received approval under either Section 219a or 248?** See response to #2 above.
4. **Can the Board allow facilities that have not yet been constructed or sought approval under Sections 248 or 219a prior to the establishment of the standard offer (required by statute to be completed by September 30, 2009) to obtain the standard offer rate once it is available.** If all criteria set forth by the Board under Docket 7523 is met, then the project should be eligible to receive the standard offer rate. In the example stated in question 4, the direct answer would be no.

5. **Can the Board limit the participation of small-scale facilities?** The Statute refers to rapid development of renewable energy. GMP believes the Board may be over burdened by reviewing proposals of many small projects. A lower project size threshold could be set to allow more efficient projects into the queue first. It can then be determined if rapid development is in fact being achieved, and if the lower threshold should be modified.
6. **Are there any statutory barriers to establishing a queue for resources?** GMP does not recognize any statutory barriers to establishing a queue process. A queue process will be necessary in order to assure orderly, organized development. It will also assure that adequate review is given to the distribution system for each project as necessary, so as to not degrade the reliability or safety of the distribution system.

Best regards,



Josh Castonguay

Cc: SPEED email service list